



## POSTAL SERVICE

### 39 CFR Part 111

#### Revenue Deficiency

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is amending the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) to clarify the Postal Service revenue deficiency policy.

**DATES:** *Effective:* May 7, 2018.

**FOR FURTHER INFORMATION CONTACT:** Janet Meddick at (202) 268-2652 or Pierre DeFelice at (724) 993-3596 or Garry Rodriguez at (202) 268-7281.

**SUPPLEMENTARY INFORMATION:** The Postal Service published a notice of proposed rulemaking on December 13, 2017, (82 FR 58580-58582) to amend DMM section 604.10.0, *Revenue Deficiency*, to update the definition of a revenue deficiency; designate Postal Service contacts for submitting appeals; and add sections to provide the definition of a mailer, description of assessments and mailers responsibilities, and policy on assessed revenue deficiencies.

The Postal Service received 3 formal responses on the proposed rule, all of which included multiple comments.

Comments from the first responder are as follows:

***Mailer Comment***

Clarification needed on deducting deficiencies directly from a trust account.

***USPS Response***

Action by the Postal Service to deduct funds from a mailer's trust account or any other funds in USPS possession would be a last resort effort to collect revenue due after the appeal process has been exhausted and the mailer has not made an appropriate payment arrangement.

***Mailer Comment***

Clarification needed on the timing and handling of due process notification on appeals.

***USPS Response***

The 30 day time frame listed in 3.2.1 is the time for a mailer to respond to the notification of a revenue deficiency assessment. Reasonable extensions for appeal will continue to be entertained for mailers that request such time to review documentation and data to formulate their response.

Comments from the second responder are as follows:

***Mailer Comment***

Clarification needed on the expansion of liability, written notification, and due process.

***USPS Response***

The clarification of "mailer" contained in new section 3.1.1 is intended to ensure that the identification and responsibility of any error in preparation is

assessed to the appropriate party(ies), mail owner, mail preparer, and/or list provider. It is not intended as an effort to collect more than what is owed. The definition of “Revenue Deficiency” in new 3.1.1 (a) specifically states that a written notification to the mailer citing the amount of the deficiency and the circumstances is required. Accordingly, a policy requiring written notification of the deficiency to the assessed mailer is still in existence.

***Mailer Comment***

Clarification needed on the interest charge.

***USPS Response***

The 6% interest charge is per annum after a final agency decision is rendered by the Pricing and Classification Service Center (PCSC) when the mailer is in default.

***Mailer Comment***

Clarification needed on the collection process.

***USPS Response***

The possible actions that the USPS may choose to enforce would only be applied if an assessed mailer, after a final agency decision has been rendered, fails to make payment, enter into a payment agreement, or otherwise fails to negotiate a settlement of the debt.

Comments from the third responder are as follows:

The third responder had numerous comments that were determined to be beyond the scope of this final rule. The Postal Service will review and address these comments in a separate forum with the responder.

These revisions will ensure the proper payment of postage while providing a superb customer experience from sender to receiver.

### **List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following changes to the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

Accordingly, 39 CFR part 111 is amended as follows:

### **PART 111 – [AMENDED.]**

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301-307; 18 U.S.C. 1692-1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

### ***Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM)**

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### **600 Basic Standards for All Mailing Services**

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### **604 Postage Payment Methods and Refunds**

*[Delete 10.0, Revenue Deficiency, in its entirety and renumber 11.0 and 12.0 as 10.0 and 11.0.]*

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## **607 Mailer Compliance and Appeals of Classification Decisions**

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*[add new 3.0 to read as follows:]*

### **3.0 Revenue Deficiency**

#### **3.1 General**

The revenue deficiency process outlined in 3.0 is an administrative process that supplements and does not diminish any rights the Postal Service has to recover revenue deficiencies through other legally available methods, such as when the deficiency arises as a result of fraud, misrepresentation, or the misuse of PC Postage products or other Postage Evidencing Systems.

##### **3.1.1 Definitions**

Revenue deficiency definitions are as follows:

- a. *Revenue deficiency:* means a shortage or underpayment of postage or fees that has been calculated and assessed to a mailer. Unless assessed under other applicable postal regulations, revenue deficiencies are generally assessed as provided herein by the Postmaster; manager, Business Mail Entry; the program manager, Revenue and Compliance, or other postal official, who issues a written notification to the mailer citing the amount of the deficiency and the circumstances.
- b. *Mailer:* A mailer is defined as the mail owner or an individual or entity that prepares or presents a mailing to the Postal Service and includes those who allow others to use a postage meter or PC postage product (collectively

“postage evidence system” - see 604.4.1.1 and 604.4.1.2) that has been authorized for use by the individual or entity.

### **3.1.2 Assessments**

Postal officials review mailings, postage statements, and other relevant documentation in assessing a revenue deficiency. Mailers are required to cooperate and provide any documentation or information requested by postal officials during the review and assessment process. A mailer’s failure to provide requested documentation or information during a review may result in a negative inference concerning the documentation or information requested.

### **3.1.3 Assessed Revenue Deficiencies**

Assessed revenue deficiencies may be subject to the following:

- a. If a mailer fails to tender payment to the Postal Service within 30 days of receipt of a final agency decision, or fails to comply with the terms or conditions of a payment plan agreed to by the Postal Service concerning the final agency decision, or is suspected by the Postal Service of continuing to repeatedly short pay postage, the Postal Service may:
  1. Deduct from the mailer’s trust account or any other funds in USPS possession any deficiencies incurred within 12 months of the date of the final mailing on which the deficiency was assessed.
  2. Initiate debt collection procedures.
  3. Restrict or suspend discounted mailing privileges with the concurrence of the manager, Revenue Assurance and Vice President Controller, or as

otherwise allowed by regulation, or in accordance with any agreement with the mailer.

b. Discounted mailing privileges may be suspended or restricted regardless of payment status of an assessed revenue deficiency if underpayment of postage occurs again after a mailer has been assessed a revenue deficiency.

c. Interest on assessed revenue deficiencies will accrue at a rate of 6% per annum beginning 30 days after the receipt of the final agency decision and will continue until the debt is paid.

d. Other fees and costs related to an assessed revenue deficiency may be collected as allowed by law or regulation.

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## **3.2 Appeal of Ruling**

### **3.2.1 General Decision**

Except as provided in 604.4.4.4 through 604.4.4.5, 3.2.2, and 703.1.0, a mailer may appeal a revenue deficiency assessment by sending a written appeal to the postmaster or manager in 3.2.1a through 3.2.1c within 30 days of receipt of the notification. In all cases, the mailer may be asked to provide more information or documentation to support the appeal. Failure to do so within 30 days of the request is grounds for denying an appeal. Any decision that is not appealed as prescribed becomes the final agency decision. Mailers may send appeals as follows:

a. To the district manager, Finance, for revenue deficiencies for fees. The district manager, Finance, issues the final USPS decision.

b. To the Postmaster, manager, Business Mail Entry, program manager, Revenue and Compliance, or other postal official, for revenue deficiencies for postage. The appeal is then forwarded to the manager, PCSC, who issues the final agency decision.

c. To the manager, Product Classification (see 608.8.0 for address), if the PCSC manager first assessed the deficiency. The manager, Product Classification issues the final agency decision.

### **3.2.2 Nonprofit USPS Marketing Mail Decision**

Nonprofit mailers have two levels of appeal. They may appeal revenue deficiency assessments as follows:

IF THE INITIAL REVENUE DEFICIENCY ASSESSMENT WAS MADE BY:	FIRST- LEVEL APPEAL	SECOND-LEVEL APPEAL AND FINAL USPS DECISION
Postmaster; manager, Business Mail Entry; manager, Revenue and Compliance; or other Postal official	manager, PCSC (see 608.8.0 for address)	manager, Product Classification (see 608.8.0 for address)

All appeals must be submitted in writing within 30 days of the previous USPS decision. Any decision that is not appealed as prescribed becomes the final agency decision; no appeals are available within the USPS beyond the second appeal.

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We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

**Ruth B. Stevenson,**

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[FR Doc. 2018-04890 Filed: 3/9/2018 8:45 am; Publication Date: 3/12/2018]